

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

**DONALD KIMERY, et al.,**

**Plaintiffs,**

**V.**

**BROKEN ARROW PUBLIC SCHOOLS, et al.,**

## Defendants.

**Case No. 11-CV-0249-CVE-PJC**

## PLAINTIFFS' STATUS UPDATE

Pursuant to this Court's July 18, 2011 Opinion and Order staying this case, [Dkt. 52], Plaintiffs provide the following status report regarding state administrative proceedings.

On August 3, 2011, the Oklahoma State Department of Education (“OSDE”) published a memorandum pursuant to the amended Henry Scholarship Act 2011, Okla. Sess. Law Serv. Ch. 356 (H.B. 1744), codified as amended at 70 O.S. 13-101.2 (OSCN 2011). The OSDE memorandum explained how parents could apply for reimbursement, and how applications for reimbursement would be processed.<sup>1</sup> The memorandum stated that the “LHN Scholarship Reimbursement application will be made available on the OSDE Website,” and that “[t]he application deadline for reimbursement is **October 1, 2011.**” *Id.* at 1 (emphasis in original).

On September 2, 2011, two of the Defendants in this lawsuit, Jenks Public Schools and Union Public Schools, sued several of the Plaintiffs in this lawsuit in Tulsa County District Court. *Jenks v. Spry*, No. CV-2011-00890. The state court lawsuit seeks an injunction prohibiting Plaintiffs in this lawsuit from seeking reimbursement through the OSDE process, as

1 Memorandum from Anita Eccard, Associate State Director, OSDE (Aug. 3, 2011), *available at*  
<http://www.sde.state.ok.us/Curriculum/SpecEd/pdf/Scholarship/Reimbursement.pdf>.

well as a declaratory judgment that the Henry Scholarship Act violates the Oklahoma Constitution. There is currently a motion to dismiss pending in the state court lawsuit.

The only family in the state that applied for reimbursement in accordance with the OSDE memorandum was the Fisher family, who are both Plaintiffs in this lawsuit and defendants in the state court lawsuit. After reviewing the Fishers' application for reimbursement, the OSDE informed the Fishers in a letter dated October 25, 2011 that their claim for reimbursement had been denied. The letter stated that the Fishers have ten days to appeal the OSDE decision.

Plaintiffs' counsel was informed of the denial of reimbursement on Friday, October 28, 2011. Given these developments, Plaintiffs' counsel will be consulting with the Plaintiff families over the next several days and anticipates taking additional action with respect to the case by November 7, 2011.

Respectfully submitted,

/s Eric Rassbach

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 31, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

J. Douglas Mann  
Frederick J. Hegenbart  
Jerry Alan Richardson  
Karen L. Long

Date: October 31, 2011

/s Eric Rassbach  
Eric Rassbach